

NO.

2448

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IN THE  
United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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MARY M. SMITH, as Executrix,

Appellant,

vs.

WILLIAM SMITH,

Appellee.

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MOTION AND SUPPLEMENT TO BRIEF.

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T. J. WALSH,

C. B. NOLAN,

WM. SCALLON,

T. J. HOOLAN,

Of Counsel for Appellee.

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F. B. Moulton



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Now comes the appellee and respectfully moves this court to be allowed to file the following supplement to his brief in the above entitled cause. *JJ Walsh CB Nolan*

*Wm Scallan JJ Walsh*

Of Counsel for Appellee.

SUPPLEMENT TO BRIEF.

Regarding the point sought to be made on pages 77 and 78 of appellant's brief, to the effect that a judgment prematurely entered is not void, but erroneous merely, we refer to Palmer v. McMasters, 8 Mont. 186, 195, and to

State ex rel Hickey v. District Court, 42 Mont. 496, 507,

in which it is held "a judgment by default entered too soon is as much a nullity as if it had been taken on a defective service."

The citations were overlooked in preparing the brief and are submitted for the purpose of showing what the established rule of Montana is regarding the point in question. The validity of the order of discharge is discussed in appellee's brief on pages six to nine. It will be recalled that there was no appearance of the appellee at the time that the order of discharge was made, and that no notice of any application therefor had been given to him. Whatever may be the rule elsewhere, the cases above cited establish the rule for Montana, that a judgment of a state court, by default, is void if prematurely entered. The analogy is evident.

T. J. WALSH,  
C. B. NOLAN,  
WM. SCALLON,  
T. J. HOOLAN,  
Of Counsel for Appellee.